



Patent Application
Attorney Docket No.: 59486.000002

#8
7/18/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:)
Bengt Krister OLSON) Group Art Unit: 1651
Serial No.: 09/853,635) Examiner: Kailash C. Srivastava, Ph.D.
Filed: May 14, 2001)

For: COMBINED MARINE AND PLANT EXTRACT COMPOSITIONS

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JUL 17 2002

RESPONSE TO OFFICE ACTION RESTRICTION REQUIREMENT
OF JUNE 4, 2002

TECH CENTER 1600/2900

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Responsive to the Office Action mailed June 4, 2002, please consider the following remarks.

REMARKS

In the Office Action of June 4, 2002, the Examiner requested restriction to one of the following inventions under 35 U.S.C. § 1.121.

I - Claims 1-12, 28, 37-40, 42-45 and 49-64 drawn to a composition, classified under Class 424, subclass 548 for example.

II - Claims 13-27, 29-36 and 41 drawn to a second composition, classified under Class 424, subclass 766 for example.

III - Claims 46-47 drawn to a cosmetic treatment, classified under Class 424, Subclass 401 for example.

IV - Claim 48 drawn to a method to enhance collagen synthesis in skin, classified under Class 424, subclass 439 for example.

Election with Traverse

Applicant hereby elects Invention II, claims 13-27, 29-36 and 41 drawn to a second composition, with traverse.

Applicant respectfully submits that the application as claimed relates to a single invention. The Applicant respectfully disagrees with the Examiner that the invention relates to 4 inventions, namely Groups I, II, III, and IV. The Applicant wishes to present lines of reasoning explaining to pool all or some of the Groups under a single inventive concept.

Group I has one independent claim reading

“1. A composition for oral administration comprising plant extract and cartilage extract, wherein the plant extract comprises grape seed extract and tomato extract.”

The composition of the claims of Group I has three features: i) cartilage extract; ii) grape seed extract; iii) tomato extract.

Group II has one independent claim relating to a composition for oral administration, said composition comprising i) cartilage, one or more compounds extractable therefrom, or derivatives thereof, ii) one or more hydrophilic antioxidants, and iii) one or more lipophilic antioxidants.

As it is clear from the subclaims of Group II, namely claim 14, grape seed extract (feature ii of the independent claim of Group I) is a source of hydrophilic antioxidants (feature ii of the independent claim of Group II). Moreover, as it is clear from the subclaims of Group II, namely

claim 15, tomato extract (feature iii of the independent claim of Group I) is a source of hydrophilic antioxidants (feature iii of the independent claim of Group II).

Thus, given feature i) is the same in both Groups, and features ii) and iii) are shared in both groups, it can be easily understood that the composition as defined by independent claim 1 and independent claim 13 relate to the same invention.

It can be understood that the independent claim of Group I defines a source for the features of the independent claim in Group II. Thus, the claims of Group I read upon the claims of Group II. The independent claims provide alternate definitions of the same invention, the first defined by the source of the material, the other defined by the nature of the material and its activity.

Based at least in part on the above discussion, the Applicant respectfully requests that Group I and Group II be acknowledged as pertaining to a single invention.

Group III comprises two independent claims, both comprising the administration of a composition of the invention. Both independent claims relate to treating the condition of the skin. Group IV consists of a single independent claim relating to the increase in collagen synthesis in the skin or lessening the decrease in collagen synthesis in the skin.

Contrary to the Examiner's contention that Group III and IV are unrelated, because they are not connected in design, operation, and/or effect, Applicant respectfully submits that Group III and IV represent a single invention because by increasing the level of collagen synthesis and/or reducing collagen degradation, one invariably improves the condition of the skin, irrespective of the reason for the damage to the skin.

Moreover, the improvement of the condition of the skin by treating the conditions listed in the independent claims of Group III will also be accompanied, either by a direct casual effect or by an indirect association, with an increase in collagen synthesis and/or lessening in decrease in collagen synthesis. The skin condition will be improved, at least in part, as a result of collagen synthesis or be accompanied by greater collagen synthesis. Thus, the two are connected in design and effect.

Although the Examiner is not incorrect in his contention that “the cosmetic improvement of skin may or may not require an increase in collagen synthesis”, it is known to the person skilled in the art that improved skin conditions have better collagen production. Conversely, optimal collagen production results in improved skin condition.

Moreover, Applicant respectfully submits that the claims of the designated groups have not necessarily acquired a separate status in the art for examination purposes, notwithstanding possible different art classifications which may have been artificially assigned thereto in the U.S. Patent and Trademark Office. Art very relevant to the patentability of the compositions, and the methods related to its application, might very logically be found in the art classes assigned to the claims group of the compositions. The classification cited in support of the election requirement is merely used for cataloging purposes and it is not conclusive of the propriety of such a requirement. It is further submitted that an important advantage in pursuing just one application encompassing both, the compositions and the methods related to its application is that the examination work of the Patent and Trademark Office would be simplified, insofar as duplication of searching effort would be eliminated.

Based at least in part on the above discussion, the Applicant respectfully requests that Group III and Group IV be acknowledged as pertaining to a single invention.

In view of the above remarks, it is thus respectfully requested that the restriction requirement be withdrawn and that all claims be allowed to be prosecuted in the same application. In the event that the requirement is made final, and in order to comply with 37 C.F.R. § 1.143, Applicant reaffirms the election of claims 13-27, 29-36 and 41 (Group II), holding Groups I and III-IV in abeyance under the provisions of 37 C.F.R. § 1.142(b) until final disposition of the elected claims.

Conclusion

Applicant respectfully submits that the application is in condition for allowance and respectfully requests a notice of allowance for the pending claims. Should the Examiner determine that any further action is necessary to place this application in condition for allowance the Examiner is kindly requested and encouraged to telephone Applicant's undersigned representative at the number listed below.

It is believed that a one-month extension of time is due in connection with this response. The Assistant Commissioner is hereby authorized to charge fees under 37 C.F.R. §§ 1.16 and 1.17 which may be required now or hereafter, or credit any overpayment, to Deposit Account No. 50-0206.

Respectfully submitted,
HUNTON & WILLIAMS

Date:

July 12, 2002

1900 K Street, N.W.
Suite 1200
Washington, D.C. 20006-1109
Telephone: (202) 955-1500
Facsimile: (202) 778-2201

By:

David H. Milligan
David H. Milligan, Reg. No. 42,893